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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

ARMANDO R. VENEGAS,

Plaintiff and Appellant,

v.

JPMORGAN CHASE BANK, N.A., etc., et
al.,

Defendants and Respondents.

C068546

(Super. Ct. No.
39201100262958CUORSTK)

Plaintiff Armando R. Venegas brings this pro se judgment roll appeal from an order denying him a preliminary injunction to prevent defendants JPMorgan Chase Bank (Chase), Washington Mutual Bank (WaMu), and California Reconveyance Company (CRC) from proceeding on a trustee sale of his house. Plaintiff contends the trial court abused its discretion on multiple bases when declining to issue the preliminary injunction. As we explain *post*, we shall dismiss plaintiff's appeal as moot.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff bought his house in Lathrop in 2006. He executed a promissory note in the amount of \$406,029, and a deed of trust in favor of WaMu. The deed of trust was subsequently acquired by Chase. On January 7, 2011, Chase recorded an Assignment of Deed of Trust, assigning all interest under plaintiff's 2006 deed of trust and underlying note to Wells Fargo Bank, and to CRC as Trustee.

Chase, through its agent CRC, subsequently instituted nonjudicial foreclosure proceedings against the house. Plaintiff sought emergency injunctive relief, a stay of foreclosure proceedings, and declaratory relief. He also sought to enjoin defendants from completing pending foreclosure proceedings.

Following a hearing at which both plaintiff and counsel for defendants appeared and argued, the trial court denied plaintiff the requested relief, finding that it lacked jurisdiction as the house was the subject of litigation that had been removed to federal court, and also that plaintiff had failed to show a reasonable probability of success in the action. Plaintiff appealed from that ruling, resulting in the instant appeal.

Chase and CRC demurred to the original complaint. The trial court sustained the demurrer with leave to amend on the ground the complaint was uncertain, ambiguous and unintelligible, and sustained the demurrer to plaintiff's claim

for injunctive relief on the ground it failed to state a cause of action. Plaintiff filed a first amended complaint seeking the same relief, to which defendants again demurred. The demurrer was again sustained with leave to amend, and plaintiff filed a second amended complaint.

Defendants demurred to the second amended complaint, and the court sustained defendants' demurrer without leave to amend. Judgment was entered in defendants' favor dismissing the action with prejudice in its entirety.

We requested supplemental briefing from the parties, asking them to comment on whether the subsequent dismissal of plaintiff's underlying claims in their entirety rendered his appeal of the denial of the preliminary injunction moot. We now answer that question in the affirmative.

DISCUSSION

The appeal in this case is from the trial court's denial of plaintiff's application for a preliminary injunction to block the trustee sale of his home.¹ A preliminary injunction is an

¹ Plaintiff also suggests in his initial briefing as well as in his supplemental brief that he may challenge the trial court's order sustaining one or more of defendants' demurrers. In argument, he attempted such challenge. We decline to construe the notice of appeal as permitting such a challenge. (*Silver v. Pacific American Fish Co., Inc.* (2010) 190 Cal.App.4th 688, 691 [notice of appeal given before announcement of the trial court's intended ruling invalid]; *Grell v. Laci Le Beau Corp.* (1999) 73 Cal.App.4th 1300, 1307 [any error in order sustaining a demurrer is waived by filing of an amended complaint].)

interim remedy designed to maintain the status quo pending a decision on the merits. (*MaJor v. Miraverde Homeowners Assn.* (1992) 7 Cal.App.4th 618, 623 (*MaJor*).) It is not, in itself, a cause of action; a cause of action must exist before injunctive relief may be granted. (*Ibid.*)

The trial court had jurisdiction to adjudicate the demurrers pending appeal from the denial of plaintiff's motion for a preliminary injunction. "An appeal from an order denying a preliminary injunction does not deprive the trial court of jurisdiction to proceed to try the case on the merits." (*MaJor, supra*, 7 Cal.App.4th at p. 623; 6 Witkin, Cal. Procedure (5th ed. 2008) Provisional Remedies, § 402, p. 344.) In order to avoid this result, the plaintiff may request a stay of trial court proceedings while the appeal from denial of the preliminary injunction is pending. (*MaJor, supra*, at pp. 623-624.) Plaintiff here failed to obtain such stay and when, as here, the trial court sustains a demurrer without leave to amend while the appeal from an order denying a preliminary injunction is pending, the appeal is rendered moot. (*Id.* at p. 623; *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 398-399.)

DISPOSITION

The appeal is dismissed as moot. Defendants are awarded

their costs of appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

DUARTE, J.

We concur:

BLEASE, Acting P. J.

HOCH, J.